

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.17.102 relating to)	AMENDMENT
the organic certification program)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On February 24, 2007, the Montana Department of Agriculture proposes to amend the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on February 8, 2007, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

4.17.102 ADOPTION OF NATIONAL ORGANIC PROGRAM REGULATIONS

(1) The department hereby adopts and incorporates by reference the following parts of the United States Department of Agriculture (USDA) National Organic Program (NOP) final rule, Title 7, Part 205, Code of Federal Regulations (CFR) adopted December 21, 2000, as amended at 68 FR 61987-61993, October 31, 2003; 68 FR 62215-62218, November 3, 2003; 70 FR 29579, May 24, 2005; 70 FR 61217-61219, October 21, 2005; 71 FR 32803-32807, June 7, 2006; and 71 FR 53299-53303, September 11, 2006 National Organic Program (NOP):

(a) through (f)(i) remain the same.

(ii) Sections 205.640 through 205.642;

(ii) through (iv) remain the same, but are renumbered (iii) through (v).

(2) and (3) remain the same.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: The changes will correct a two-part finding from a recent internal audit. First, our current administrative rule does not adopt the current National Organic Program (NOP) standards. The NOP standards have been amended on six separate occasions since December 2000. In order to remain compliant with the terms of our USDA accreditation, the department must revise our administrative rule whenever the federal rule is amended. In addition, our current administrative rule

does not adopt all applicable sections of the NOP standards. Sections 205.640-641 specify the fees that the department will be charged by the USDA for accreditation. Section 205.642 specifies that the department will charge fees for certification that are "reasonable" and only charge those fees that are "filed with the USDA administrator." The omission of these sections in the original rule appears to be a simple oversight. Adoption of these sections will not change any fees that the department charges for certification.

The six amendments, which this proposed rule adopts, to the National Organic Program regulation have the following impacts:

Amendment 1, 68 FR No. 211, 61987 - 61993, October 31, 2003: This rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List), adding ten substances, revising two annotations and making eight technical corrections.

Amendment 2, 68 FR No. 212, 62215 - 62218, November 3, 2003: This rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List), adding four substances, and revising the annotation of one substance.

Amendment 3, 70 FR No. 99, 29579, May 24, 2005: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, this rule adjusts civil monetary penalties imposed by agencies within USDA to incorporate an inflation adjustment.

Amendment 4, 70 FR No. 203, 61217 - 61219, October 21, 2005: This rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List), revising the annotation of one substance on the National List, methionine, to extend its use in organic poultry production until October 21, 2008.

Amendment 5, 71 FR No. 109, 32803 - 32807, June 7, 2006: The rule revises the National Organic Program (NOP) regulations to clarify that nonorganically produced products listed in section 205.606 of the regulations may be used as ingredients in or on processed products labeled as "organic" only when organic ingredients are not commercially available. The rule also revises section 205.236 of the NOP regulation, involving types of feed permitted for dairy animals being converted to organic production.

Amendment 6, 71 FR No. 175, 53299-53303, September 11, 2006: This rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List). Specifically, the rule revises the annotation of one substance on the National List, Glycerine oleate, to eliminate its use after December 31, 2006. The rule adds "Hydrogen chloride — for delinting cotton seed for planting" to the National List. The rule amends section, 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as "Organic" or "Made with Organic (Specified Ingredients or Food Group(s))" by adding nine substances, seven with specific use restrictions. Finally, this rule amends Sec. 205.681 by updating the mailing address for where to file a certification or accreditation appeal.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than February 22, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. A written request for hearing must be received no later than February 22, 2007.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 12 persons based on approximately 120 organic operations certified by the department.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Gregory H. Ames
Gregory H. Ames
Rule Reviewer

Certified to the Secretary of State, January 16, 2007.